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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 950

GOLDBLATT BROS., INC.,
AN ILLINOIS CORPORATION,
Petitioner,

vs.

RICHARD KOSLEY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

STANFORD CLINTON,
134 North La Salle Street,
Chicago 2, Illinois,

ROBERT A. SPRECHER,
100 West Monroe Street,
Chicago 3, Illinois,

CHARLES LEVIN,
5231 Hohman Avenue,
Hammond, Indiana,
Counsel for Petitioner.

CITATIONS.

Cases.

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Jones v. Mississippi Valley Barge Line Co., 98 F. Supp. 787 7

Kelley v. Adams, 120 Ind. 340, 342, 22 N. E. 317 (1889) 7

Lake Michigan Water Company v. U. S. Fidelity Co., 70 Ind. App. 537, 123 N. E. 703 (1919) 8

Local 205, etc. v. General Electric Company, 233 Fed. 2d 85, 97-100 (1st Cir., 1956) 5

Maitland v. Reed, 37 Ind. App. 469, 77 N. E. 290 (1905) 8

Memphis Trust Co. v. Brown-Ketchum Iron Works, 166 Fed. 398 (6th Cir., 1909) 8

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Miller v. Goodwine, 29 Ind. 46, 47 (1867) 7

Signal-Stat Corporation v. U. E. Workers of America, 235 F. 2d 298 (2d Cir., 1956) cert. den., 77 S. Ct. 1293 (1957) 4

Smith v. Steward, 5 Ind. 220 (1854) 7

Supreme Council of the Order of Chosen Friends v. Forsinger, 125 Ind. 52, 55, 25 N. E. 129 (1890) 8

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Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U. S. 448, 77 S. Ct. 912 (1957) 5

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Statutes.

United States Arbitration Act, 9 U. S. C. §§ 1-3 ..... 2, 4

Section 301, Labor Management Relations Act, 29 U. S. C. § 185 ..... 2, 5

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Miscellaneous.

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Gregory, "The Collective Bargaining Agreement: Its Nature and Scope", 1949 Wash. U. L. Q. 3 6

Lenhoff, "The Present Status of Collective Contracts in the American Legal System", 39 Mich. L. Rev. 1109 (1941) 6

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OCTOBER TERM, 1957.

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GOLDBLATT BROS., INC.,
AN ILLINOIS CORPORATION,
Petitioner,

vs.

RICHARD KOSLEY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Goldblatt Bros., Inc., an Illinois corporation, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above case on January 28, 1958, petition for rehearing denied on February 20, 1958.

OPINIONS BELOW.

The opinion of the District Court (App. R. 32-35) is unreported. The opinion of the Court of Appeals, printed in the Appendix herein, *infra*, p. 13, is reported at 251 F. 2d 558.

JURISDICTION.

The judgment of the Court of Appeals was entered on January 28, 1958 (Appendix, *infra*, p. 19). Rehearing was denied on February 20, 1958 (Appendix, *infra*, p. 20). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED.

Whether, in a diversity action brought by an employee against his employer who is engaged in commerce, for wages allegedly due him under a collective bargaining agreement, the employee may disregard arbitration provisions of such agreement and enjoin the employer from proceeding with arbitration?

STATUTES INVOLVED.

The statutory provisions involved are sections 1-3 of the United States Arbitration Act, 9 U. S. C. §§ 1-3, section 301 of the Labor Management Relations Act, 29 U. S. C. §185, and Burns Indiana Statutes Annotated (1946 Replacement Volume) §3-201. They are printed in the Appendix herein, *infra*, pp. 11-12.

STATEMENT.

The respondent, Richard Kosley, an Indiana resident, was employed by the petitioner, Goldblatt Bros., Inc., as an operating engineer from 1939 to November 1, 1955, on which date he was discharged (App. R. 15-6). On September 15, 1956, the respondent brought this action against the petitioner to recover wages claimed to be due during the period from July 1, 1947 to October 29, 1955 (App. 1, 2), on the ground that collective bargaining agreements between the petitioner and the union of which the respondent

was a member provided that all hours worked in excess of forty hours per week were to be paid at the hourly rate of time and one-half and that, during this period, the respondent was not so paid (App. R. 36, 39, 44, 48, 52, 56, 60, 64 and 68). Federal jurisdiction was based upon diversity of citizenship and the required jurisdictional amount (Supp. App. R. 1a).

Commencing July 20, 1947, and during each year thereafter, there was in force a collective bargaining contract between Local No. 846, International Union of Operating Engineers and the petitioner, Goldblatt Bros., Inc., covering the terms and conditions of employment of the members of that union as employees, and the petitioner as employer. The respondent was a member of the union (App. R. 18, 24-29). Each contract contained substantially the following provision (App. R. 28, 41, 45, 49, 53, 57, 61, 65 and 69):

> "It is hereby agreed that there shall be no strikes, lockouts, stoppages or the use of any economic coercion during the term of this agreement. *It is hereby agreed that any dispute, controversy or question arising under this agreement which can not be settled by discussion and negotiation between the parties shall be submitted to arbitration* and each party hereto shall select one arbitrator, and the two shall select a third. In the event the arbitrators designated by the parties can not agree upon the third arbitrator, then the Department of Conciliation of the United States Department of Labor is hereby authorized to appoint the third arbitrator. The arbitrators thus appointed shall meet within six days and the decision of the majority of the arbitrators shall be conclusive upon both parties hereto." (Emphasis added.)

In the first part of May, 1957, petitioner initiated arbitration proceedings and notified respondent's attorney. (Deft. Exs. 1, 2 and 3; App. R. 5-7, 71). Respondent then

filed a petition to restrain the petitioner, Goldblatt Bros., Inc., from further proceeding with the proposed arbitration. (App. R. 2-4). Following a hearing (App. R. 12-36), the District Court entered such a restraining order (App. R. 8-9). Upon the petitioner's appeal (App. R. 9), the Court of Appeals affirmed that order. (Appendix, *infra.*, p. 19.)

REASONS FOR GRANTING THE WRIT.

1. Neither of the courts below considered the applicability of the United States Arbitration Act to the present litigation. Section 3 of that Act (9 U. S. C. §3) gives the district court, in a diversity case, the power to stay the trial of an issue which was subject to arbitration under the agreement of the parties. Although this Court has held in *Bernhardt* v. *Polygraphic Company of America*, 350 U. S. 198, 76 S. Ct. 273 (1956) that section 3 requires, even in diversity cases, a "maritime transaction" or "a contract evidencing a transaction involving commerce," it appears that the collective bargaining agreement meets the latter test. Petitioner, an Illinois corporation, operates a retail department store at Hammond, Indiana; respondent was employed as an operating engineer at that store (Supp. App. R. 1a-2a). On July 11, 1957, the National Labor Relations Board held in Goldblatt Bros., Inc., Employer, and Retail Clerks Union Local 1460, Retail Clerks International Association, AFL-CIO, Petitioner, Case No. 13-RC-5286, 118 NLRB No. 74, that "The Employer is engaged in commerce within the meaning of the Act." Thus, as a matter of law, the collective bargaining agreement evidences a transaction involving commerce, and section 3 of the Act would require the district court to stay judicial proceedings in favor of arbitration proceedings. The district court erred in restraining the arbitration proceedings here. *Signal-Stat Corporation* v. *U. E. Workers of America*, 235 F.

2d 298 (2d Cir., 1956) *cert. den.*, 77 S. Ct. 1293 (1957); *Donahue* v. *Susquehanna Collieries Company*, 138 2d 3 (3d Cir., 1943); *Wilson & Company* v. *Fremont Cake & Meal Company*, 77 F. Supp. 364 (Neb., 1948).

Moreover, while section 1 of the Act excludes "contracts of employment of seamen, railroad workers, or any other class of workers engaged in foreign or interstate commerce," the record does not show that respondent comes within the exception. This Court specifically abstained from passing upon the further question of this exception in the *Bernhardt* case. It has been pointed out that the term "involving commerce" may be read as synonymous with "affecting commerce" while the term "engaged in commerce" should be given its most narrow technical meaning. *Tenney Engineering, Inc.* v. *United Electrical Workers Local 437*, 207 Fed. 2d 450 (3d Cir., 1953); *Local 205, etc.* v. *General Electric Company*, 233 Fed. 2d 85, 97-100 (1st Cir., 1956); Cox, "Grievance Arbitration in the Federal Courts," 67 Harv. L. Rev. 591, 599 (1954).

2. The decision of the court below conflicts with the federal policy favoring the enforcement of arbitration provisions in employment contracts. In *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, 77 S. Ct. 912 (1957), holding that section 301 of the Labor Management Relations Act of 1947 not only gives federal district courts jurisdiction over controversies involving labor contracts in industries affecting commerce but also authorizes federal courts to fashion a body of federal law to enforce such contracts, and in particular their arbitration provisions, this Court noted that "the Congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes * * * [is] clear." The policy favoring arbitration of labor contract disputes is manifested in the rule that where an employee brings an individual judicial action on the contract, he is required to show that he

has exhausted his remedies under the contract before seeking judicial intervention. Cox, "Rights Under a Labor Agreement," 69 Harv. L. Rev. 601, 647-8 (1956); *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U. S. 653, 73 S. Ct. 906 (1953).

3. The Court of Appeals, by misinterpreting this Court's decision in *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U. S. 437, 75 S. Ct. 489 (1955), ignored or misapplied applicable state law requiring arbitration of the present wage dispute. The Court of Appeals, quoting from the *Westinghouse* case to the effect that "employees have always been able to enforce their individual rights in the state courts", concluded that respondent here had a right to bring judicial proceedings for back wages and was not bound by the arbitration clause. The *Westinghouse* case merely held that a union could not sue in the federal courts to enforce the individual grievance of one of its members. There is nothing in the *Westinghouse* case that prompts the conclusion that the individual employee is not bound by the arbitration provisions of the collective bargaining contract. It has been recognized that that contract may form the basis for the individual employment contract. *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U. S. 653, 73 S. Ct. 906 (1953); Burstein, "Enforcement of Collective Agreements by the Courts", 6 N. Y. U. Conf. on Labor 31 (1953); Gregory, "The Collective Bargaining Agreement: Its Nature and Scope", 1949 Wash. U. L. Q. 3; Lenhoff, "The Present Status of Collective Contracts in the American Legal System", 39 Mich. L. Rev. 1109 (1941).

Assuming the inapplicability of the United States Arbitration Act, the legal issues raised here are to be governed by the law of the State of Indiana. *Bernhardt* v. *Polygraphic Company of America*, 350 U. S. 198, 76 S. Ct. 273 (1956); *Transcontinental & Western Air, Inc.* v. *Koppal*,

345 U. S. 653, 73 S. Ct. 906 (1953). Neither court below specified as to whether its decision was on the basis of Indiana law. The opinion of the Court of Appeals, predicated upon the *Westinghouse* case, appears to be based on that court's views as to the interpretation of the contract in question. The contract specifies that "any dispute, controversy or question arising under this agreement which cannot be settled by discussion and negotiation between the parties shall be submitted to arbitration." Respondent's claim for back wages is based upon that contract (App. R. 2). Basic principles of contract law preclude a party from ignoring the arbitration provisions of a contract when he relies upon the wage and hour provisions of the same contract as the basis for his action. Moreover, individual grievances relating to the payment of wages are always held to be subject to arbitration provisions in collective bargaining agreements. *P. S. Thorsen & Co., Inc.* v. *Neves*, 179 Misc. 11, 37 N. Y. S. 2nd 113; *Microflex Products Co., Inc.* v. *Rosenthal*, 80 N. Y. S. 2nd 788; *Jones* v. *Mississippi Valley Barge Line Co.*, 98 F. Supp. 787. In each of these cases, the courts stayed judicial proceedings commenced by the employee to recover wages in order that arbitration proceedings be concluded.

Indiana has declared that it favors the process of arbitration and it accords to an award the status of a judgment of a court. *Smith* v. *Stewart*, 5 Ind. 220 (1854); *Fargo* v. *Reighard*, 13 Ind. App. 39, 39 N. E. 888 (1895). Although the Indiana statute, Burns Indiana Statutes Annotated (1946 Replacement Volume) § 3-201, applies to existing disputes only, the statute expresses a public policy favoring arbitration and it is cumulative to the common law. *Kelley* v. *Adams*, 120 Ind. 340, 342, 22 N. E. 317 (1889); *Webb* v. *Zeller*, 70 Ind. 408, 410 (1880); *Miller* v. *Goodwine*, 29 Ind. 46, 47 (1867). At common law, an agreement whereby the parties bind themselves to submit a future dispute to arbi-

tration is not illegal. *Supreme Council of the Order of Chosen Friends* v. *Forsinger*, 125 Ind. 52, 55, 25 N. E. 129 (1890); *Maitland* v. *Reed*, 37 Ind. App. 469, 77 N. E. 290 (1905). Although the parties to a common arbitration may revoke their submission at any time prior to the rendering of an award, *Grand Rapids & I. R. Co.* v. *Jaqua*, 66 Ind. App. 113, 115 N. E. 73 (1917), the right to revoke is subject to ordinary principles of contract law and revocation is permissible only in cases where the promise to arbitrate is not supported by consideration. If the arbitration clause is part of the consideration of the contract as a whole, as it was in the present case, as opposed to a separate agreement to arbitrate, then under Indiana law it is clearly not revocable. *Memphis Trust Co.* v. *Brown-Ketchum Iron Works*, 166 Fed. 398 (6th Cir., 1909); *Lake Michigan Water Company* v. *U. S. Fidelity Co.*, 70 Ind. App. 537, 123 N. E. 703 (1919); *Maitland* v. *Reed*, 37 Ind. App. 469, 77 N. E. 290 (1905).

The Indiana authorities are similar to Missouri cases discussed in a recent decision of this Court. In *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U. S. 653 (1953), the employee had been employed in accordance with the terms of a collective bargaining agreement which provided for a specified grievance procedure culminating in arbitration. The employee did not pursue the procedure outlined in the collective contract but instead brought suit in the federal district court, claiming diversity of citizenship and seeking damages for wrongful discharge. This Court held that the case should be dismissed, stating at page 660:

> "Under the law of Missouri, as shown above, respondent was required to show exhaustion of administrative remedies under his employment contract in order to sustain his cause of acton."

CONCLUSION.

This case presents for initial consideration by this Court the applicability of the Arbitration Act to, and the impact of federal policy in favor of arbitration provisions in, a collective bargaining agreement, which has been made the basis of litigation brought by an employee against his employer.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

STANFORD CLINTON,
ROBERT A. SPRECHER,
CHARLES LEVIN,
Counsel for Petitioner.

April 23, 1958.

APPENDIX.

1. Statutory Provisions Cited and Quoted.

United States Arbitration Act, 9 U. S. C. § 1-3.

Section 1 defines "commerce" as:

> "* * * commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

Section 2 provides:

> "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

Section 3 provides:

> "If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties

stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration."

SECTION 301 LABOR MANAGEMENT RELATIONS ACT, 29 U. S. C. § 185.

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce * * * may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties * * *."

BURNS INDIANA STATUTES ANNOTATED (1946 REPLACEMENT VOLUME).

"All persons * * * may, by an instrument in writing, submit to the arbitration or umpirage of any person or persons, to be by them mutually chosen, any controversy existing between them which might be the subject of a suit at law * * *."

2. Opinion of Court of Appeals.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

No. 12108. September Term, 1957—January Session, 1958.

Richard Kosley,
Plaintiff-Appellee,
v.
Goldblatt Bros., Inc., an Illinois corporation,
Defendant-Appellant.

} Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

January 28, 1958.

Before MAJOR, FINNEGAN and SCHNACKENBERG, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* This is an appeal by defendant from a restraining order entered by the district court in a diversity suit brought by plaintiff, a citizen of Indiana, against defendant, an Illinois corporation authorized to do business in Indiana.

The complaint, filed September 15, 1956, in addition to showing diversity of citizenship, alleges that the amount in controversy, exclusive of interest and costs, exceeds the sum of $3,000. It sets forth a cause of action for a balance due on account of wages earned by plaintiff while employed as an operating engineer by defendant in its Hammond, Indiana, retail department store in the period from July 1, 1947 to October 29, 1955, as well as a penalty alleged to have accrued against defendant by virtue of its

refusal to pay said wages on demand, pursuant to Indiana law. A claim for reasonable attorneys' fees is also contained in the complaint.

Defendant's answer to the complaint, filed October 9, 1956, consists of admissions and also categorical denials that plaintiff was employed by it as alleged, that it agreed to pay an hourly rate at one and one-half times the regular rate for hours worked in excess of 40 hours per week, as alleged, that defendant is indebted as charged, that plaintiff demanded payment, that the wages claimed are wholly due and unpaid, that the statutory penalty accrued and that it was necessary for plaintiff to employ an attorney to collect said wages. The answer affirmatively sets up a defense of payment and also that, if plaintiff did perform the services in excess of 48 (*sic*) hours per week, he did so voluntarily and against the direction of defendant's management. The answer also pleaded the bar of the statute of limitations.

On May 24, 1957, plaintiff filed a petition which, *inter alia*, stated that the wages for which he had sued were "due by various contracts" between the International Union of Operating Engineers, Local 846 and defendant, of which union plaintiff was a member, and that defendant had notified plaintiff's attorney that it had resorted to the arbitration proceeding authorized by "a contract entered into by the International Union of Operating Engineers, Local 846, and Goldblatt Bros., Inc." Plaintiff prayed that defendant be restrained from any further proceedings in said arbitration. The district court received evidence, both oral and written, at a hearing on said petition. It entered such a restraining order and this appeal followed. Among other things, it appeared from the evidence that plaintiff was discharged November 1, 1955. As plaintiff's exhibits, the court received in evidence a series of agree-

ments between defendant, as employer, and Local 846, covering the relevant period of time.

The agreement, in effect from July 25, 1955 and extending to July 24, 1958, *inter alia*, establishes the union as the collective bargaining agency for all employees of the company engaged in the operating of all boilers, engines, etc., fixes the hourly wages of operating engineers, a regular work day of 8 hours and a work week of 40 hours, and provides that overtime shall be paid at an hourly rate of time and one-half. It also makes provision for time to eat and for vacations and holidays, and specifies the duties to be performed by the engineers. Specifically, it provides:

> "Article I.
>
> "That they shall keep the machinery under their charge in good running order and do all temporary repairs."

Article VIII provides:

> "During the term of this agreement there shall be no strikes, lockouts, stoppages or the use of any form of economic coercion by either of the parties hereto."

Article IX provides:

> "It is further mutually agreed by and between said parties:
>
> 1. That during the life of this agreement there shall be no further demands made upon either party.
> 2. That any dispute, controversy or question arising under this agreement which cannot be settled by discussion and negotiation between the parties shall be submitted to arbitration. Each party hereto shall select one arbitrator and the two shall select a third. * * *"[1]

1. Earlier agreements in the series contained provisions that the engineers were to make necessary repairs in maintaining their equipment. Common to all contracts was an arbitration clause similar to that contained in the 1955 agreement.

In this court, defendant argues (1) that the Supreme Court of the United States has held:

> "* * * that Section 301 of the Labor Management Relations Act of 1947 expresses a federal policy in favor of the enforcement of agreements to arbitrate grievance disputes such as the one involved in the present case. Section 3 of the United States Arbitration Act requires that federal courts stay judicial proceedings until arbitration proceedings are completed. In view of this overwhelming expression of congressional policy in favor of arbitration, the federal district court clearly erred in restraining arbitration proceedings in the present case."

It also argues (2) that ordinary principles

> "* * * of contract law applicable in the State of Indiana hold that the arbitration provision in a contract is binding upon parties thereto because it constitutes consideration for the wage and hour and other provisions in the same contract, that a party may not rely on parts of a contract and ignore other parts of the same contract, and that the arbitration agreement is a condition precedent to suing upon the contract and until the arbitration remedies provided in the contract are exhausted no judicial proceeding will lie."

Plaintiff disclaims any intention of basing his suit on section 301. He relies upon the allegations of his complaint showing diversity of citizenship and the statutory amount of damages sought.

Furthermore he contends that the provision for arbitration in the contract between the union and defendant does "not cover a claim by an individual employee for past due wages." We agree with this contention. An employee has always had a right to bring suit in a court to recover wages claimed to be owing him from his employer. As the court said in *Association of Employees* v. *Westinghouse Corp.*, 348 U. S. 437, 460: "The employees have always been able to enforce their individual rights

in the state courts." Such an action is based upon a hiring contract between the employer and the employee. While the contract between the employees' union and the employer may determine the rate of wages of the employee, the latter's right of action is not superseded by the employer-union agreement. An employee may enforce his claim for back wages by suing in a state court, or in a federal court where there is present diversity of citizenship and the required amount is involved.

Moreover, while we recognize that the arbitration provisions here in question must be given effect in a proper case, we emphasize that the subject matter of such a proceeding is clearly defined by the contract itself, and, as so defined, it does not include an individual claim of an employee for wages due. The arbitration machinery is to operate on any dispute, controversy or question arising under the agreement, which cannot be settled by discussion and negotiation between the parties. This provision follows an undertaking by the parties that there shall be no strikes, lockouts, stoppages, or the use of any form of economic coercion by either party. Arbitration as here envisioned is a method of settling, without court action, matters pertaining to working conditions, wage rate schedules, the right to vacations, etc., which were it not for the discussions, negotiations and arbitrations provided by the contract, would very likely result in economic coercion by either party.[2] Unlike such disagreements, which,

2. In some of the agreements between the union and the employer, appears a provision, known as section 9, giving the employer the right to discharge an employee for just cause, which is defined as dishonesty, drunkenness, absenteeism, insubordination, theft and inefficiency. While it appears from the evidence that plaintiff was discharged, no question is raised by the complaint or answer in regard to whether the discharge was justified. However, if the right to discharge plaintiff were contested by him, that might be an example of where arbitration would be available. Such a situation is basically different from the enforcement of his claim for wages due him from his employer.

if not resolved in the manner set forth in the contract, would probably affect the entire business of the employer and the work of many or all employees, a single employee's individual claim for wages earned by him is a matter for his individual concern which historically he has a right to submit to a court of law for adjudication upon the evidence submitted in an orderly judicial trial. The dispute, controversy or question which defendant wishes to settle by arbitration is that reflected in the complaint of the plaintiff and the answer of the defendant. Such is the action which plaintiff properly brought in the district court. It was the court's traditional jurisdiction over such a case that it was protecting by its restraining order. Such defenses as the bar of the statute of limitations which can be adequately considered only by a tribunal versed in the law were never intended by the parties to the contract to be decided by arbitration.

Accordingly we affirm the district court's order.

ORDER AFFIRMED.

3. Judgment of Court of Appeals.

UNITED STATES COURT OF APPEALS.

For the Seventh Circuit.

Chicago 10, Illinois.

Tuesday, January 28th, 1958.

Before:

Hon. J. Earl Major, Circuit Judge,
Hon. Philip J. Finnegan, Circuit Judge,
Hon. Elmer J. Schnackenberg, Circuit Judge.

Richard Kosley,
Plaintiff-Appellee,
No. 12108 *vs.*
Goldblatt Bros., Inc., an Illinois corporation,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Indiana, Hammond Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED with costs.

4. Order Denying Rehearing.

UNITED STATES COURT OF APPEALS.

For the Seventh Circuit.

Chicago 10, Illinois.

Thursday, February 20, 1958.

Before:

Hon. J. Earl Major, Circuit Judge,
Hon. Philip J. Finnegan, Circuit Judge,
Hon. Elmer J. Schnackenberg, Circuit Judge.

Richard Kosley,
Plaintiff-Appellee,
No. 12108 *vs.*
Goldblatt Bros., a corporation,
Defendant-Appellant.

} Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

It Is Ordered by the Court that appellant's petition for rehearing in the above-entitled cause be, and the same is hereby, DENIED.